

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE  
(PPA) PRODUCTS LIABILITY  
LITIGATION,

MDL NO. 1407

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This document relates to:

George and Donna Campbell v.  
Bayer Corporation, et al., No.  
3-cv-2708

ORDER GRANTING DEFENDANT  
DOUBLE QUICK, INC'S MOTION  
TO DISMISS

Double Quick, Inc. ("Double Quick") moves this court to dismiss the claims of George and Donna Campbell pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a cause of action. Having reviewed the motion, the response filed, and the reply thereto, the court hereby finds and rules as follows:

Mr. Campbell alleges that he suffered a stroke following ingestion of Alka-Seltzer Plus, a phenylpropanolamine ("PPA")-containing product. Alka-Seltzer Plus is manufactured by Bayer Corporation ("Bayer"). Mr. Campbell further alleges that he purchased the Alka-Seltzer Plus product at Double Quick, a

1 retailer.

2 Mr. Campbell originally filed his claim in the Circuit Court  
3 of Bolivar County, Second Judicial District, Mississippi. The  
4 action was removed to federal court on the basis of diversity of  
5 citizenship and ultimately transferred to this court as part of  
6 MDL 1407. In the complaint, Mr. Campbell alleges claims for  
7 strict liability, negligence, breach of warranty, and negligent  
8 misrepresentation. Mrs. Campbell alleges claims for loss of  
9 consortium.

10 On December 1, 2003, plaintiffs filed a motion to remand the  
11 case back to Mississippi state court. Bayer opposed the motion,  
12 arguing that Double Quick had been fraudulently joined for the  
13 purpose of defeating diversity jurisdiction. The court agreed and  
14 on May 5, 2004 issued an order denying plaintiff's motion to  
15 remand. In the order, the court held that plaintiffs had failed  
16 to state a cause of action against Double Quick, and that the  
17 failure is obvious according to the settled rules of Mississippi.  
18 Double Quick now moves the court to dismiss plaintiffs' claims  
19 against it.

20 This court has ruled on the legal issue of whether a claim  
21 has been stated against Double Quick, and under the law of the  
22 case doctrine, the court is precluded from reexamining the issue  
23 absent a showing of substantially different evidence, of a change  
24 in controlling authority, or that the decision was clearly  
25 erroneous and would work a manifest injustice. Sentry Life Ins.

1 Co. v. Roberts, 86 F.3d 1163, 1996 WL 267326 (9<sup>th</sup> Cir. 1996) (law  
2 of the case doctrine is intended to maintain consistency and  
3 avoid reconsideration during a single lawsuit); Pit River Home  
4 and Agr. Co-Op Ass'n. v. U.S., 30 F.3d 1088, 1096-97 (9<sup>th</sup> Cir.  
5 1994) (law of the case ordinarily precludes a court from  
6 reexamining an issue previously decided by the same court in the  
7 same case): Moore v. James H. Matthews & Co., 682 F.2d 830, 833-  
8 34 (9<sup>th</sup> Cir. 1982) (discretion of a court to review earlier  
9 decisions should be exercised sparingly so as not to undermine  
10 the salutary policy that underlies the law of the case rule). The  
11 plaintiffs have made no such showing.

12 Based on the foregoing, the court GRANTS Double Quick's  
13 motion to dismiss plaintiffs' claims pursuant to Federal Rule  
14 12(b)(6) and hereby dismisses the claims against Double Quick  
15 with prejudice.

16 DATED at Seattle, Washington this 26<sup>th</sup> day of July, 2005.

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19 BARBARA JACOBS ROTHSTEIN  
20 UNITED STATES DISTRICT COURT JUDGE  
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